

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-003-13-1-5-00216-16
45-003-16-1-5-00515-17
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-303-018.000-003
Assessment Years: 2013 & 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated a 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 19, 2015. On January 6, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner initiated a 2016 appeal with the PTABOA. The PTABOA issued notice of its final determination on March 24, 2017. On May 8, 2017, Petitioner filed a Form 131 petition with the Board.
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on March 5, 2018. Neither the ALJ nor the Board inspected the property.
5. James Nowacki, Petitioner, was sworn and testified. Robert Metz and Joseph James, Lake County Appeal Officers, were sworn and testified for Respondent.¹

Facts

6. The subject property is a vacant residential lot located at 4309 W. 26th Place (approx.) in Gary.
7. For 2013, the assessed value was \$3,000. For 2016, the assessed value was \$2,600.

¹ Terrance Durousseau from the assessor’s office was present but was not sworn and did not testify.

8. Petitioner requested an assessed value of \$2,000 for both years.

Record

9. The official record contains the following:

- a. A digital recording of the hearing
- b. Exhibits:

Respondent did not present any exhibits.

Petitioner Exhibit 1:	GIS map,
Petitioner Exhibit 2:	Property record card (“PRC”)

Board Exhibit A:	Form 131 petitions,
Board Exhibit B:	Notices of hearing,
Board Exhibit C:	Hearing sign-in sheet,

- c. These Findings and Conclusions.

Burden

10. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
12. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered

by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value was \$3,000 for 2012 and 2013. Petitioner, therefore, has the burden of proof for 2013. The assessed value decreased from 2015 to 2016. Petitioner, therefore, also has the burden of proof for 2016.

Summary of Parties’ Contentions

15. Petitioner’s case:
 - a. Petitioner contends this lot is located by the expressway. He contends it is a blighted area with derelict structures and there is a lot of criminal activity in the area. *Nowacki testimony; Pet’r Ex. 1.*
 - b. Petitioner contends the subject property is similar to three other appealed properties, 4501 W. 26th Place, 4512 W. 26th Place, and 4313 W. 26th Place. All of the properties are the same size, have the same characteristics, and are in the same blighted area. He contends all of the properties are affected by external obsolescence. Petitioner argues the properties should have the same assessed values in order to be consistent and fair. Petitioner contends each parcel should be assessed at \$2,000. *Nowacki testimony; Pet’r Ex. 1.*
 - c. Petitioner contends the assessor reduced the value of 4512 W. 26th Place from \$3,100 to \$1,800. That property is a block and half away from the subject parcel. It is in the same neighborhood and has the same characteristics. He contends 4512 W. 26th Place has a negative 50% influence factor. The other parcels have negative influence factors of 20%. He believes the negative 50% influence factor is the more appropriate of the two. *Nowacki testimony; Pet’r Ex. 2.*
 - d. Petitioner contends the assessor doesn’t feel the information on the PRC is important. This is evident from the inaccuracies on it regarding the topography, utilities, neighborhood life cycle, the paved roads or lack thereof, and the incorrect influence factors. *Nowacki testimony; Pet’r Ex. 2.*
 - e. Petitioner acquired the properties for \$100 each. Petitioner contends market value was established at the auction, which was attended by 500 eligible and able bidders. He claims nobody bid more than the minimum for these properties. *Nowacki testimony.*
16. Respondent’s case:

- a. Respondent contends the assessed values among the properties are not inconsistent. In 2013, two of the parcels were assessed at \$3,000 and two were assessed at \$3,100. In 2016, the subject property was reduced to \$2,600 to account for poor market conditions. *James testimony*.
- b. Respondent contends that because 4512 W. 26th is on a “paper street,” it is inaccessible. Consequently, the assessor applied a negative 50% influence factor for that reason. *James testimony*.
- c. Respondent contends Petitioner has failed to present any market evidence to support his values. Respondent recommends no change in the assessments for 2013 and 2016. *James testimony*.

ANALYSIS

17. Petitioner failed to make a prima facie case for a reduction in the assessed values. The Board reached this decision for the following reasons:
 - a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance (“DLGF”) has defined as the property’s market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
 - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2013 assessment date was March 1, 2013. For a 2016 assessment, the valuation date was January 1, 2016. Ind. Code § 6-1.1-2-1.5.
 - c. Petitioner purchased the property for \$100. Petitioner did not request the property be assessed for the purchase price. Instead, he contends the property should be assessed at \$2,000. Petitioner, however, presented no evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of

no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

- d. Petitioner contends the property suffers from external obsolescence. External obsolescence is caused by an influence outside of a property's boundaries that has a negative influence on its value. *Clark v. Dep't of Local Gov't Fin.*, 77 N.E.2d 1277 (Ind. Tax Ct. 2002). To receive an adjustment for external obsolescence, a property owner must identify the causes of obsolescence present and quantify the amount of obsolescence it believes should be applied to his property. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Petitioner identified some issues that might be the cause of external obsolescence but failed to quantify the amount of obsolescence.
- e. Petitioner contends there are numerous errors on the PRC, specifically regarding the characteristics of the property. Petitioner did not show how any changes to those characteristics would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case for an error in the assessment. *Eckerling v. Wayne Co. Ass'r*, 841 N.E.2d at 674, 677 (Ind. Tax Ct. 2006). To successfully make a case, Petitioner needed to show the assessment does not accurately reflect the subject property's market value-in-use. *Id. See also P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899,900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is).
- f. Petitioner failed to make a prima facie case for reducing the years at issue.
- g. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

- 18. Petitioner failed to establish a prima facie case that the 2013 and the 2016 assessed values were incorrect. Consequently, the Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 and 2016 values should not be changed.

ISSUED: May 31, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.